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SS # 000-00-0521

## DETERMINATION

Issue Week:	<b>42/20</b>	Applicable
Week Ending:	<b>10/17/20</b>	Wisconsin Law: <b>108.04(11)</b>

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Deputy	Dated	Decision final unless an appeal is received or postmarked by:
<b>ADJUDICATOR 5017</b>	<b>02/18/21</b>	<b>03/04/21</b>

**THIS INFORMATION IS IMPORTANT AND SHOULD BE READ IMMEDIATELY**

This determination resolves an unemployment eligibility issue. If you have questions about this determination contact the Claimant Assistance Line during business hours, or contact the department by mail or fax.

If you have questions about employer charges or want to notify the department of an additional issue(s), contact the Employer Assistance Line during business hours, or contact the department by mail or fax.

<p>Claimant Assistance Line: (414) 435-7069</p> <p>Employer Assistance Line: (414) 438-7705</p> <p>See <a href="https://dwd.wisconsin.gov/uiben/services.htm">https://dwd.wisconsin.gov/uiben/services.htm</a> for hours of operation.</p>	<p>Wisconsin Unemployment Help Center</p> <p>P.O. Box 9001</p> <p>Menomonee Falls, WI 53052</p> <p>FAX: (608) 260-3060</p>
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If you intend to appeal, you must file an appeal by the date stated on the front side of this determination regardless of whether you have been able to reach the department by telephone, mail, or fax.

**HOW TO FILE AN APPEAL**

**IF YOU DISAGREE WITH THIS DETERMINATION, YOU HAVE THE RIGHT TO FILE AN APPEAL.** An appeal is a request for a hearing before the Appeal Tribunal. You must submit a separate request for each determination you want to appeal.

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**Filing by mail or fax include:**

- \* A copy of the determination or the 9-digit ID number located in the upper left-hand corner
- \* Claimant name and social security number
- \* Indication if it is a claimant or employer appeal
- \* Employer name and location where the work was performed
- \* Representative name and address, if you have one
- \* Dates and times when you and your witness(es) and/or representatives cannot attend a hearing
- \* Any special needs such as an interpreter or other accommodations
- \* Claimant, employer or representative signature and date signed

Appeals received or postmarked after the deadline **must** include a reason why you are filing late. The Appeal Tribunal will review the reason and determine whether a hearing will be held or will dismiss the appeal without a hearing and the determination will remain final.

**WHERE TO FILE AN APPEAL**

**Online:** **CLAIMANTS** <https://my.unemployment.wisconsin.gov>

**EMPLOYERS** <https://dwd.wisconsin.gov/ui/sides>

**Fax:** (608) 327-6498

**Mail:** Madison Hearing Office  
P.O. Box 7975  
Madison, WI 53707

**IMMEDIATELY START PREPARING FOR A HEARING SINCE HEARING NOTICES MAY BE MAILED ONLY 6 DAYS PRIOR TO THE SCHEDULED HEARING.**

When an appeal is filed, read the online booklet, Attending an Unemployment Insurance Hearing, available for viewing and printing at <https://dwd.wisconsin.gov/dwd/publications/ui/hearing.htm>. **Read all information carefully.**

**If you are the claimant, you must continue to file weekly claims while this determination is under appeal.** If you have any questions, refer to the online Handbook for Claimants at <https://dwd.wisconsin.gov/uiben/handbook>.

FOX VALLEY HEARING OFFICE  
P.O. Box 7975  
Madison, WI 53707

Telephone: (608) 266-8010  
Fax: (608) 327-6498

# APPEAL TRIBUNAL DECISION

State of Wisconsin  
Department of Workforce Development  
Unemployment Insurance Division

Hearing No. 21401006AP

Mailed to:

In the matter of:

Employee: TRACY L LONG, APPELLANT

B.C. & S.S. No.: 01/\*\*\*-\*\*-0521

vs.

Employer: NOT APPLICABLE

UI Account No.:

\*\* FILE COPY \*\*

## APPEAL RIGHTS

SEE THE DATE BELOW FOR THE TIME LIMIT.

IF YOU ARE APPEALING BECAUSE YOU FAILED TO APPEAR FOR THE SCHEDULED HEARING AND ARE REQUESTING A NEW HEARING, FOLLOW THE FAILURE TO APPEAR PROCEDURES ON THE REVERSE SIDE.

IF YOU ARE APPEALING FOR ANY OTHER REASON, YOU MUST FOLLOW THE PETITION PROCEDURES ON THE REVERSE SIDE.

IF YOU DO NOT UNDERSTAND THE PROCEDURES, PLEASE CALL THE UI HEARING OFFICE FOR ASSISTANCE.

**DECISION:** SEE ATTACHED DECISION WHICH REVERSES THE INITIAL DETERMINATION.

Employee appeared by:

IN PERSON

Employer appeared by:

NOT APPLICABLE

Administrative Law Judge	Dated and Mailed	Petition Must Be Received or Postmarked By:
JEFFREY R. PAWELSKI	JULY 9, 2021	JULY 30, 2021

(SEE REVERSE FOR ADDITIONAL INFORMATION)

Decision mailed to:

TRACY L LONG, 937 MAIN ST, SAINT CLOUD, WI 53079-1474

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THE DEPARTMENT'S DETERMINATION HELD: that in filing claims for weeks 42 through 46 of 2020, the claimant concealed from the department that she was receiving disability payments from Social Security. As a result, the claimant's future benefit amount had a reduction of \$2,900 that remains in effect during the six-year period that ends February 13, 2027.

Based on the applicable records and evidence in this case, the appeal tribunal makes the following

### FINDINGS OF FACT and CONCLUSIONS OF LAW

The claimant initiated a claim for unemployment benefits in September of 2019. The claimant applied to receive social security disability insurance (SSDI) payments sometime after that. She waited several months, until October of 2020, before she was informed that she was eligible for SSDI payments. She received her first SSDI payment on October 13, 2020 (week 42). That payment was for \$11,497.50 and represented payments for December of 2019 through September of 2020, as SSDI payments for a given month are paid the following month. When the claimant completed her unemployment weekly claim certification for week 42 of 2020, she was asked, "Are you receiving any disability benefits from Social Security?" and she responded, "No." The claimant was confused by the question, and answered "No" because the payment she had received was for prior months. She continued to answer "No" to that question for each week through week 46 of 2020, the week ending November 14. The claimant also tried to contact a department representative for help in clearing up her confusion and had difficulty reaching anyone. On November 18, 2020 (week 47), the claimant received a monthly payment for SSDI. When she filed her weekly claim certification for that week, she answered "Yes" when asked if she was receiving disability payments from Social Security.

The issue to be decided is whether the claimant concealed from the department that she was receiving SSDI payments in weeks 42 through 46 of 2020, and, if so, what amount of future benefits should the claimant be ineligible for as a result of any concealment.

Wisconsin Statute §108.04 (11) provides, in part, as follows:

(a) If a claimant, in filing his or her application for benefits or claim for any week, conceals any material fact relating to his or her eligibility for benefits, the claimant is ineligible for benefits as provided in par. (be).

(b) If a claimant, in filing a claim for any week, conceals any of his or her wages earned or paid or payable or hours worked in that week, the claimant is ineligible for benefits as provided in par. (be).

(be) A claimant is ineligible for benefits for acts of concealment described in pars. (a) and (b) as follows:

1. For each single act of concealment occurring before the date of the first determination of concealment under par. (a) or (b), the claimant is ineligible for benefits for which he or she would otherwise be eligible in an amount equivalent to 2 times the claimant's weekly

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benefit rate under s. 108.05 (1) for the week in which the claim is made.

2. For each single act of concealment occurring after the date of the first determination of concealment under par. (a) or (b), the claimant is ineligible for benefits for which he or she would otherwise be eligible in an amount equivalent to 4 times the claimant's weekly benefit rate under s. 108.05 (1) for the week in which the claim is made.

3. For each single act of concealment occurring after the date of a 2nd or subsequent determination of concealment under par. (a) or (b), the claimant is ineligible for benefits for which he or she would otherwise be eligible in an amount equivalent to 8 times the claimant's weekly benefit rate under s. 108.05 (1) for the week in which the claim is made.

(bm) The department shall apply any ineligibility under par. (be) against benefits and weeks of eligibility for which the claimant would otherwise be eligible after the week of concealment and within 6 years after the date of an initial determination issued under s. 108.09 finding that a concealment occurred. The claimant shall not receive waiting period credit under s. 108.04 (3) for the period of ineligibility applied under par. (be). If no benefit rate applies to the week for which the claim is made, the department shall use the claimant's benefit rate for the claimant's next benefit year beginning after the week of concealment to determine the amount of the benefit reduction.

(g)

1. In this subsection, "conceal" means to intentionally mislead the department by withholding or hiding information or making a false statement or misrepresentation.

2. A claimant has a duty of care to provide an accurate and complete response to each inquiry made by the department in connection with his or her receipt of benefits. The department shall consider the following factors in determining whether a claimant intended to mislead the department as described in subd. 1.:

a. Whether the claimant failed to read or follow instructions or other communications of the department related to a claim for benefits.

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b. Whether the claimant relied on the statements or representations of persons other than an employee of the department who is authorized to provide advice regarding the claimant's claim for benefits.

c. Whether the claimant has a limitation or disability and, if so, whether the claimant provided evidence to the department of that limitation or disability.

d. The claimant's unemployment insurance claims filing experience.

e. Any instructions or previous determinations of concealment issued or provided to the claimant.

f. Any other factor that may provide evidence of the claimant's intent.

3. Nothing in this subsection requires the department, when making a finding of concealment, to determine or prove that a claimant had an intent or design to receive benefits to which the claimant knows he or she was not entitled.

The claimant credibly asserted that she did not conceal information. While the claimant was receiving SSDI payments, she was confused because the first payment she received was for prior months and she was not able to reach anyone to clear up her confusion. If the claimant had intended to conceal information from the department, she would not have reported receiving SSDI payments in week 47 of 2020, after she received her first payment for a single month.

The appeal tribunal therefore finds that in weeks 42 through 46 of 2020, the claimant did not conceal from the department any wages or material facts relating to her eligibility for benefits, within the meaning of section 108.04(11)(a-bm) of the statutes, and the claimant's benefit amount shall not have a reduction of \$2,900 for benefits and weeks that become payable during the six-year period that ends February 13, 2027.

### DECISION

The department's determination is reversed. Accordingly, the claimant's benefit amount shall not have a reduction of \$2,900 for benefits and weeks that become payable during the six-year period that ends February 13, 2027.

### APPEAL TRIBUNAL

By: \_\_\_\_\_

  
Jeffrey R. Pawelski  
Administrative Law Judge

JRP:jrp

State of Wisconsin C D12  
Department of Workforce Development  
Unemployment Insurance Division



UI LO #: 01

UI Acct. #:

## DETERMINATION

**TRACY L LONG**

**SAINT CLOUD**

Issue Week:	42/20	Applicable
Week Ending:	10/17/20	Wisconsin Law: 108.04(2)(H); 108.04(12)(F)

**FINDINGS AND DETERMINATION OF THE DEPUTY:**

THE CLAIMANT REPORTED RECEIVING SOCIAL SECURITY DISABILITY PAYMENTS. THE CLAIMANT CANNOT RECEIVE SOCIAL SECURITY DISABILITY PAYMENTS AND UNEMPLOYMENT INSURANCE BENEFITS CONCURRENTLY.

## EFFECT

BENEFITS ARE DENIED WHILE THE CLAIMANT IS RECEIVING SOCIAL SECURITY  
DISABILITY PAYMENTS.

IF YOU ANSWERED IN ERROR, OR YOUR CIRCUMSTANCES HAVE CHANGED, CALL  
1-414-435-7069.

THIS DECISION RESULTS IN AN OVERPAYMENT OF \$ 1160.00 WHICH MUST BE REPAID BY THE CLAIMANT.

SEND A CHECK OR MONEY ORDER, PAYABLE TO UNEMPLOYMENT INSURANCE,  
TO THE UNEMPLOYMENT INSURANCE DIVISION, P.O. BOX 7888, MADISON, WI 53707.

THE DEPARTMENT WILL WITHHOLD UNEMPLOYMENT BENEFITS PAYABLE FOR FUTURE WEEKS TO OFFSET OVERPAYMENTS OF UNEMPLOYMENT INSURANCE AND OTHER SPECIAL PROGRAM BENEFITS THAT MUST BE REPAID TO THIS STATE, TO ANOTHER STATE, OR TO THE FEDERAL GOVERNMENT.

THIS OVERPAYMENT AMOUNT INCLUDES BENEFITS WHICH WERE WITHHELD AND TRANSFERRED TO THE INTERNAL REVENUE SERVICE FOR FEDERAL TAXES AND/OR THE WISCONSIN DEPARTMENT OF REVENUE FOR STATE TAXES.

RECOVERY OF THE OVERPAYMENT IS NOT WAIVED UNDER S. 108.22(8)(C) BECAUSE THE  
ERRONEOUS PAYMENT(S) WERE NOT THE RESULT OF DEPARTMENTAL ERROR AND/OR THEY  
WERE THE RESULT OF THE CLAIMANT'S FAILURE TO PROVIDE CORRECT AND COMPLETE  
INFORMATION TO THE DEPARTMENT.

**THE DEPARTMENT MAY ISSUE A WARRANT TO SECURE THE DEBT FOR THE STATE**

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